

Q# 1270

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EXCERPTS FROM COLLECTION OF ESSAYS  
ON PROBLEMS OF INTERNATIONAL LAW  
RELATED TO THE GREATER EAST ASIA WAR

A REPORT OF STUDY  
CONCERNING  
HOSTILITIES ON THE  
OUTBREAK OF WAR

I.

Concerning the time for hostilities to open on the outbreak of war, we have to consult the Third Treaty, decided at the Second Hague Conference which prescribes that hostilities must not be performed without a preliminary notice in the form of an ultimatum wherein a declaration, or conditional declaration, of war is included. In respect to our first hostilities in the areas of Hawaii, Hongkong, Singapore, etc., it is to be questioned whether they were commenced in compliance with the above mentioned treaty. Although it appears that Britain says that our first hostilities in the Malay area were opened on the evening of Dec. 7th, we, the reporters of this study, could not clarify the actual time. There seems to be grounds for entertaining doubt that hostilities were commenced earlier (in practical time) (See IV below) than past 7:30 a.m. when the U.S. Ambassador in Tokyo, being invited to the Foreign Office, received the memorandum stating as regards the negotiation with the U.S.A. "Japan recognizes that the continuance of negotiations henceforth in hope of a settlement is useless" or some time after 8 a.m., when the British Ambassador in Tokyo was invited to the Foreign Office, and informed of what the Jap-U.S.A. negotiation had come to; needless to say, earlier than some time after 11 a.m. when the Tokyo diplomatic representatives of Britain, the U.S.A., Canada and Australia were handed notifications concerning the outbreak of war in the Hawaiian area. Thereupon, two problems must be considered. The first problem is whether the memorandum concerning the negotiation which was handed to the U.S. Ambassador at some time after 7:30 a.m. on 8th can be regarded as what is called a declaration of war in Hague Treaty No. III. The second problem is whether the Treaty was violated or not, if our hostilities in either Hawaii or Malay or Hongkong area were opened earlier in practical time than past 7 or 7:30 a.m. when the above-mentioned memorandum was handed to the U.S. Ambassador and the fact was made known to the British Ambassador, assuming that the memorandum could be regarded as a declaration of war; or earlier than some

time after 11 a.m. when the diplomatic representatives of Britain, the U.S.A., Canada and Australia received explicit notifications of the outbreak of war, assuming that the memorandum could not be regarded as a declaration of war.

## II.

The first is the question of whether the memorandum concerning the Jap-U.S.A. negotiations, which was handed to the U.S. Ambassador at some time after 7.30 a.m. on the 8th, can be regarded as the "declaration of war" referred to in Hague Treaty No. III. A noteworthy fact in relation to this problem concerns the notification given by our Government at the outbreak of the Russo-Japanese War. In the 37th year of Meiji (1904), Minister KURINO in St. Petersburg, having finished negotiations on 6 Feb., gave notification to the Russian Government, saying that Japan would retain the right to take independent action, and, at the same time, he declared his wish to set out with the staff of the legation. Professor Westlake recognized that this notification should be regarded as a declaration of war. Our recent notification handed over at some time past 7.30 a.m. on the 8th, however, can scarcely be regarded as a declaration of war, because it included no preliminary notice that independent action is being taken or that hostilities are being opened, though it states, "Japan recognizes that the continuance of negotiations henceforth in hope of a solution is useless."

## III.

The second problem is whether the Treaty was violated or not, if our hostilities in either Hawaii or Malay or Hongkong area were opened earlier in practical time than some time past 7 or 7.30 a.m. when the above-mentioned memorandum was handed to the U.S. Ambassador and the fact was made known to the British Ambassador, assuming that the memorandum could be regarded as a declaration of war; or earlier than some time past 11 a.m. when the diplomatic representatives of Britain, the U.S.A., Canada and Australia received explicit notification of the outbreak of war, assuming that the memorandum could not be regarded as a declaration of war. (Repeated).

Concerning this second problem, if we are to explain that there was no violation of the above mentioned Hague Treaty No. III, we think that the following five points ought to be considered.

(1) To take into consideration not the relation of the practical time but of the nominal time on the day when the war broke out.

(2) To regard as hostilities all or part of the encirclement measures taken by the A.B.C.D. group based on military preparations for economic rupture and preparedness for the outbreak of war.



(3) (Plainly Speaking) to pick flaws in Hague Treaty No. XVI itself, say either that the treaty itself has turned out to be only a sort of bluff or simulacrum, being unable to attain its original aim as regards the outbreak of war, or that the prescriptions themselves in the treaty are unreasonable and hypocritical, and can claim no real raison d'être, considering the nature of wars in present day international relations upon which the fates of nations are staked.

(4) To explain that as it refers to cases when the right of self-defence or of self-preservation is exercised, Hague Treaty No. III can be disregarded in this case.

#### IV.

We wish to begin with a study of the first point, that is, whether we can explain the non-violation of the Third Hague Treaty, by taking into consideration not the relation of practical time but the relation of nominal time on the day when the war broke out. Now speaking from the point of view of so called nominal time, the time is actually the same; but because the places differ the nominal time differs, and they are treated as different hours. For example, supposing that the difference of time between Tokyo and Hawaii is 5 hours, that between Tokyo and Singapore 2 hours, the nominal hours are 3 a.m. in Tokyo, 8 a.m. in Hawaii and 1 a.m. at Singapore, while they are all the same in practical time.

Suppose that we declare war at 8 a.m. in Tokyo and that we want to assert, with nominal time as a standard, that we shall not violate Hague Treaty No. III. As we open hostilities after 8 a.m. in both Hawaii and in Singapore, we should recognize that the hostilities may be commenced in Hawaii 5 hours before the practical time of delivering the declaration of war, while in Singapore they cannot be opened until 2 hours after the delivery.

Suppose the spot where hostilities will be opened is situated <sup>longitude</sup> 180° east from Tokyo, where the declaration of war is to be delivered. It is an extraordinary phenomenon for hostilities to commence one-half day before the practical time of making the declaration of war without violating the treaty prescribing notice prior to hostilities. On the contrary, if the spot is situated 180° longitude west of Tokyo, the hostilities cannot be opened before half a day has passed after the practical time of delivering the declaration of war.

A theory that it is not a violation of the treaty to open hostilities either about 5 hours or about half a day in the practical time before the time of delivering the declaration of war, if the hostilities are opened in the spot east of Tokyo where the declaration of war is delivered, cannot be weighty enough to be an interpretation of Hague Treaty No. III, when the aim of the Treaty lies in the prevention of hostilities opened suddenly without preliminary notice.

Moreover, it will be impossible in reality to open hostilities either about 2 hours or about half a day in practical time after the delivery of the declaration of war, according to the above example, if the hostilities are to be commenced in a spot west of the place where the declaration of war is delivered. In view of this, it is noteworthy that Britain, in her declaration of war, claims that the Japanese troops tried to land on the coast of Malaya and bombarded Singapore and Hong-kong on the evening of Dec. 7th. In brief, it seems to be too hard to justify, if we plead non-violation of Hague Treaty No. III, by taking into consideration nominal time instead of practical time on the day when the war broke out.

#### V.

Next, let us study the second point, that is, whether we can explain the non-violation of Hague Treaty No. III by regarding all or part of the military encirclement for economic rupture and preparedness for the outbreak of war taken by the A.B.C.D. group as hostilities. All or part of the measures for military encirclement based on economic rupture and preparedness for the outbreak of war taken by the A.B.C.D. group with the U.S.A. as its centre and including Australia, may be regarded in a somewhat vague sense as hostilities, for they were taken with enmity towards Japan. But the word "hostilities" has various meanings and, even in the Hague Treaties alone, the so-called "hostilities" in Hague Treaty No. III can be interpreted in a completely different manner from the so-called "hostilities" in the 10th article of Hague Treaty No. V.

In the latter it can be understood to indicate either an act of war in state of war as prescribed in international law or a military and harmful act which should be recognized as bringing about a state of war from the viewpoint of customary international law, but in the former it is understood in a somewhat broader sense as comprehending all harmful military measures, paying no heed to whether or not there is a state of war as prescribed in international law whether or not the state of war is caused by the harmful measures themselves. A more far-reaching conception, though a little vague, allows us to regard economic rupture or large-scale preparedness wherein some incidents of international strife are involved, as hostilities, because they are harmful acts performed with inimical intent. But hostilities in this last sense cannot be said to be the same as the so-called "hostilities" in Hague Treaty No. III. Supposing that they be the same, by the prescription of the Treaty, the commencement of such an act without a previous preliminary notice in the form of an ultimatum which includes a declaration, or conditional declaration, of war will prove to be a violation of Treaty No. III; but such an interpretation is practically absurd. For, it is quite impossible to recognize practically the stage at which the economic measures or military preparedness need preliminary notice in the form of an ultimatum which includes a declaration, or conditional declaration, of war before their /its/ commencement. Therefore, it is



difficult to argue for the non-violation of the Treaty on our part by supposing that Japan appealed to arms after her enemies A.B.C.D. had opened such hostilities as violating Hague Treaty No. III without preliminary notice in the form of an ultimatum which includes a declaration, or conditional declaration, of war, regarding economic rupture or preparedness as the so-called "hostilities" in Hague Treaty No. III.

## VI.

The third point of the above mentioned second problem is, frankly speaking, to find fault with Hague Treaty No. III, which deals with the opening of war. We wish to state this in two parts (a) and (b).

(a) Hague Treaty No. III, which concerns the opening of war, prescribes that hostilities cannot be commenced without preliminary notice in the form of an ultimatum which includes a declaration, or conditional declaration, of war. This treaty was concluded for the main purpose of preventing the other country from suffering a sudden, unexpected action, but it could make no prescriptions concerning the time to elapse between the preliminary notice and the first hostilities. Moreover, as it has no clear prescriptions concerning the place where, or the organ through which, the declaration of war is presented to the organ of the other country, one may say that it suffices to present it to the diplomatic representative of the other country in one's own, regardless of whether or not the government of the other country has notice of it before the commencement of hostilities. Thus, the original and principle aim of the Hague Treaty No. III to prevent the other country from suffering a sudden, unexpected offence has proved unattainable, leaving room for such an interpretation as one which says that it is not a violation of the treaty to open hostilities in a far-off land only some 20 or 30 minutes after the delivery of the declaration of war to the diplomatic representative of the other country in one's own capital. Hence, it is not implausible to say that the Hague Treaty No. III is nothing but a bluff or simulacrum and that there is no need to respect such a childish treaty at the outbreak of a war in which the fate of a nation is at stake.

(b) While the first hostilities in case of a war whereupon the fate of a nation is at stake will often have a grave influence on the war as the whole, Hague Treaty No. III prohibits opening hostilities unless we give preliminary notice to the other country, thus letting her have time to prepare resistance and counter-attacks. In view of actual international relations, this original purport of the Treaty is unreasonable and quixotic, and, more emphatically speaking, Hague Treaty No. III may be said to be so impossible and hypocritical that it is unable to claim from the first a real raison d'être in actual international relations. Sudden hostilities must be a formal violation of the Treaty, but it is not implausible to explain that it is not so blamable to open hostilities ahead of the other country when the war would break out at

any moment, both of the nations being well prepared, looking at it from the viewpoint of actual international relations.

However, we cannot overlook some great faults in these explanations which find fault with Hague Treaty No. III. In the case of (a), the aim of the Treaty may not be attained, though there be no formal violation of the Treaty; but we cannot conclude from this that we may disregard the Treaty and violate it formally. Since Hague Treaty No. III remains in force, it would be difficult to say that hostilities carried out without any previous knowledge of the government of the other party are not a violation of the said treaty, although hostilities are usually carried out prior to the proclamation of war. But the treaty does not call it unlawful to open hostilities as soon as the proclamation of war is delivered to the enemy government either directly or through diplomatic channels. If I am allowed to make some comments on paragraph (b), I should like to say that such an action as to fail to conform with Hague Treaty No. III, which is still in force, could not escape being branded as a treaty violation from the point of view of actual international law even though Hague Treaty No. III be unreasonable and hypocritical and even though it may not conform to actual international relations. Even if I were to cite Paragraphs (A) and (B) separately, from the standpoint of international law, they have no power to justify hostilities initiated in violation of Hague Treaty No. III. To find fault with Hague Treaty No. III for these reasons and saying that these reasons are in agreement with the following discussion on paragraph IV may give some sense of satisfaction. Especially Paragraph B, with the provisions concerning the rights of self-preservation and self-defence, will provide useful supplementary reasons, when one wants to insist that one has a right to ignore the third Article of the treaty, provided that one's existence is endangered.

#### VII.

Lastly, I want to study the claim of the right of self-preservation and self-defence, as I think I still cannot clearly indicate the non-violation of the treaty by my above statement with regard to the present war, even though there are various other points to be considered. (Reference: IV or VI Chapter).

The right of self-preservation was formerly recognized almost unanimously by the scholars of international law as one of the fundamental rights of a nation, but the prevailing theory at present is that a nation has no right of self-preservation, though that of self-defence is recognized. Some jurists use the term the right of self-preservation, but they recognize that it comes within the scope of self-defence (for example Oppenheim). Some other scholars acknowledge the right of self-preservation, but that which they recognize as its import is nothing more than the right of self-defence. (for example Hall). However, among the jurists of recent times, such as Rivier, and American Scholars such as George Grafton, Wilson, Hershey, and Garner, recognize the existence of the right of self-preservation. Or within the scope of international



law, in addition to urgent (NOTWEHR) action in regard to self defense, Kollar, for instance, recognizes an act of urgency (NOTSTANDHANDLUNG) which is similar to the right of self-preservation, based on German penal law. (Checker's note: in this case Jiko hozanken is used instead of Jiko hozanken).

The theoretical basis of recognizing the right of self-preservation jointly with the right of self-defense is to be acknowledged in present international relations. But as the two rights are not clearly considered separately in international convention, I shall refer to these points some other day. At present in this place I shall give a short discussion of the theoretical differences between the right of self-preservation and that of self-defense. However, it must be noticed that not only are they scarcely considered separately in international convention, but nowadays the thought of absolutely denying the right of self-preservation is prevailing as I mentioned above.

According to the simple theory which recognizes the two rights separately, the right of self-preservation in the narrow sense takes precedence over the ordinary rights of other countries, belonging to the rights of necessity (DROIT DE NECESSITE) just like the right of self-defense. The exercise of this right is to be recognized only within the limits of necessity in case danger threatens the rights or other legal interests which are championed by this right. In the case of the right of self-defense, it shall be exercised in order to protect its own rights and legal interests in case of being attacked by other nation. It shall not be employed against the attacking nation until the attack is actually made or the possibility of it impends, while the right of self-preservation in the narrow sense will be active when the existence of a nation (or some important interests which are tantamount to its existence) are in immediate danger. It should be recognized that this right is exercised even against a third power. In the case of the right of self-defense, interpreting it according to the tendency to place it in the same category as the right of self-defense in domestic law, it appears that it should be recognized that it can become activated in case of danger threatening rights or interests that are not extremely trifling; without restricting necessarily to cases of danger threatening existence (or important interests of about the same degree).

When one thinks over the situation at the outbreak of the present war (which shall be mentioned in Chapter VIII) it will be clearly understood that interests important for the existence of this country were in imminent danger. Accordingly, if the right of self-preservation in the narrow sense is recognized in international relations we can declare that we are entitled to disregard the provisions of Hague Treaty No. III, in so far as it is necessary to protect the right of self-preservation. From the standpoint of the right of self-defense there is a doubt as to whether we could claim a basis for saying that the situation at the outbreak of war (to be explained in Chapter VIII) implied an attack against our country. Therefore it might be said that our country was not responsible for the violation of the treaty even if it were a fact that we disregarded Hague Treaty No. III, because the right of self-defense has priority over all treaties. A note-

worthy thing in this regard is that Germany justified her aggression against Belgium under the plea of the right of self-defense at the time of the First Great War. Her justification was that the attack was made against Germany by Belgium (Kohler) or France (Chambrun). Comparing the situation before the outbreak of this war, which I shall explain in Chapt. VIII, to the conditions before the invasion of Belgium it goes without saying that there is more reason to recognize the existence of an attack in the former case.

#### VIII.

The U.S. authorities, in spite of the fact that the negotiations with our country were under way, were planning not only an economic break with our country, but were also devising a scheme of zealous oppression, hand in hand with England and other satellites, and were furthering the so-called A.B.C.D. plan.

Together with the progress of her enormous naval construction program, the U.S. was proceeding with the gradual strengthening of her naval and air bases in the Pacific area. In the Philippine Islands; she was making many preparations for the purpose of initiating war from August on, such as the construction of airdromes, the sending of more troops, the sudden despatch of submarines, the importing of many planes, large quantities of arms, ammunition, and equipment, the installation of anti-aircraft guns all along the seacoast, mine laying in Manila Bay, and so on. Moreover, in the same manner, that the U.S. steamers on the Pacific line bound for the Orient had been armed, the U.S.A. was going to propose to Britain the dual use of the port of Singapore and to demand recognition from the Dutch-Indies and Australia for the use of military bases. She also intended, as concerns China, to prevent the Burma Route, the sole line of transportation for supporting Chiang, from breaking down and declared that she would insure land transportation by sending her air forces to patrol.

The British Governor-General of Malaya had declared a state of emergency and had suddenly organized the East-Asia Fleet, appointing Admiral Thomas Philipps its Commander-in-Chief. He received reinforcements of artillerymen and engineers from Britain proper; more warships were despatched from the Indian Ocean and from South Africa. By assembling tens of thousands of soldiers on the frontier of Siam and Malaya under the pretext of defending Malaya, he showed that the time was approaching when Britain would invade Siam. British air forces were also reinforced with the help of America. There were several military connections between Britain and the Chung-King Government in the Burma area, and the actual state of affairs was that the British, American and Chinese military preparations against Japan were proceeding day by day. The A.B.C.D. federation had already added Australia to its membership and Soviet Russia seemed ready to join at any time. Keeping close political, military and economic connections with one another, they were trying to check Japan's development to the South, and it was recognized that the blockade was being strengthened day by day, in preparation for the beginning of a war.



These conditions showed the impending pressure against Japan and obviously involved an immediate threat for Japan of endangering the vital interests of her national existence. Therefore, if the right of self-preservation can be recognized to exist in the present international relations, we may consider that it may be argued that we could disregard the prescription of Hague Treaty No. III as it was a case when the right of self-preservation in the narrow sense was active, which right is superior to the rights of other countries. Furthermore, it is possible to argue that it was the case when the right of self-defence could be active, because the blockade against our country which was carried out with the realization that war would begin and which was pursued with inimical intent might be regarded as a sort of attack or a threat of an approaching attack, attempting to decide Japan's fate economically and militarily.

#### IX.

In conclusion, though there can be various considerations concerning the violation or non-violation of Hague Treaty No. III, which refers to the outbreak of war (See IV-VI above), in the last analysis we can explain not being responsible for the violation of the treaty only by explaining that Hague Treaty No. III is basically an impossible treaty (See VI above), as well as by claiming the rights of self-defence and of self-preservation.

The situation which I mentioned in Chapter VIII can be called a case when the right of self-preservation (assuming that it is recognized) was active, and that there is room to claim it was a case when the right of self-defence was in force. In perusing the Imperial edict promulgated at this time, we are advised that "there is no other alternative for the Empire except to spring up and crush all obstacles for the sake of its self-preservation and self-defence." This recognizes the coexistence of the rights of self-preservation and of self-defence. We feel that with that nature reason the propriety of our explanation for our disregard of Hague Treaty No. III is self-evident.

## C E R T I F I C A T E

W.D.C. No. \_\_\_\_\_

I.P.S. No. \_\_\_\_\_

Statement of Source and Authenticity

I, HAYASHI, Kaoru, hereby certify that I am officially connected with the Japanese Government in the following capacity: Chief of the Archives Section, Japanese Foreign Office and that as such official I have custody of the document hereto attached consisting of 226 pages, dated June 1942, and described as follows: Collection of Essays on Problems of International Law Related to the Greater East Asia War. These Essays were prepared by a Committee of well-known Japanese International lawyers in cooperation with the Foreign Ministry made soon after December 8, 1941. I further certify that the attached record and document is an official document of the Japanese Government, and that it is part of the official archives and files of the following named ministry or department (specifying also the file number or citation, if any, or any other official designation of the regular location of the document in the archives or files): Foreign Ministry.

Signed at Tokyo on this  
22nd day of October 1946.

/s/ K. Hayashi (Seal)  
Signature of Official

Witness: Nagaharu Odo /s/

SEAL  
Chief of the Archives Section  
Official Capacity

Statement of Official Procurement

I, John A. Curtis, hereby certify that I am associated with the General Headquarters of the Supreme Commander for the Allied Powers, and that the above certification was obtained by me from the above signed official of the Japanese Government in the conduct of my official business.

Signed at Tokyo on this  
22 day of Oct. 1946.

/s/ J. A. Curtis, 2nd Lt.  
Name

Witness: Richard H Rarch /s/

Investigator, IPS  
Official Capacity



大東亞戰爭關係國際法問題論叢 拔萃

戰爭開始ノ際ノ敵對行為ニ關スル研究報告

一

戰爭開始ノ際ノ敵對行為ノ行ヘルル時期ニ關シテ、所謂開戰ニ關スル海牙第二回會議議定ノ第三條約トノ關係ヲ生ズル。該條約ハ開戰宣言又ハ條件付開戰宣言ヲ含ム最後通牒ノ形式ヲ以テスル事  
前ノ豫告ナクシテ敵對行為ヲ行ハザルベキ旨ヲ定メテ居ルノデアル。今同ノ布哇、香港、シンガポ  
ール等ニ於ケル最初ノ敵對行為ガ果シテ上述ノ條約ニ順適シテ行ハレタルヤ否ヤニ關シテ問題ヲ生  
スルコトアルベキデアル。馬來方面ノ最初ノ戰國  
行為ノ行ハレタル時期ニ關シテ英國側ハ十二月七  
日ノ夕ニ行ハレタト認スル様デアルガ、報告者ハ  
果シテ何時ニ敵對行為ガ開始サレタルヤヲ詳ニシ  
得ナカツタ。布哇方面ニ於テ戰爭狀態發生ノ通告  
文ヲ東京駐劄ノ米、英、カナダ、澳洲ノ大公使ニ  
手交シタ午前十一時過ヨリモ早ク行ハレタルハ勿  
論、東京駐劄ノ米國大使ヲ外務省ニ招致シテ對米  
交渉ニ付キ、今後交渉ヲ繼續スルモ妥協ニ達スル  
ヲ得ズト認ムル一旨ノ覺書ヲ手交セル午前七時半  
過又ハ東京駐劄ノ英國大使ヲ外務省ニ招致シテ、

1811-1

Ex 1270-A

1811-2

對米交渉ノ始末ヲ通告セル午前八時過ヨリモ、或  
ハ兵隊ノ時間ノ上ニ於テハ（後文四）、早ク行ヘレ  
タルニ非ザルヤノ疑ヲ抱ク根據ガ存スル様デア  
ル。是ニ於テ二ノ問題ガ念頭ニ起ラザルヲ得ナイ。第  
一ノ問題ハ、八日午前七時半過ニ於テ米國大使ニ  
手交セル對米交渉ニ關スル覺書ハ、海牙第三條約  
ニ所謂開戰宣言ト稱スルヲ得ルヤ否ヤノ問題デア  
ル。第二ノ問題ハ、假リニ上述ノ覺書ガ開戰宣言  
ト同視シ得ルトセバ、之ヲ米國大使ニ手交シ、次  
テ英國大使ニ其始末ヲ通告セル午前七時若クハ七  
時半過、又之ヲ開戰宣言ト同視シ得ストセバ、明  
白ナル戰爭狀態發生ノ通告文ヲ米、英、カナダ、  
豪洲ノ大公使ニ手交セル午前十一時過ヨリモ、布  
哇方面又ハ馬來若クハ香港方面ノ反對行為ガ、兵  
隊ノ時間ノ上ニ於テ早ク行ヘレタルコトアリトス  
ル場合ニ於テハ、上述ノ海牙第三條約ノ違反ト爲  
サネバナラヌ乎否乎ノ問題デア  
ル。

## 二

第一ノ問題ハ、八日午前七時半過ニ於テ米國大  
使ニ手交セル對米交渉ニ關スル覺書ハ、海牙第三  
條約ニ所謂開戰宣言ト稱スルヲ得ルヤ否ヤノ問題  
デア  
ル。此問題ニ關聯シテ注意スベキハ、日露開  
戰ノ際ノ我國政府ノ通牒デア  
ル。明治三十七年（千



1811-3

九百四年、ベテルスブルグ監獄ノ栗野公使ハ、二月六日、談判ヲ終了シ、且ツ獨立行動(Independent action)ヲ執ルコトノ權利ヲ留保スル旨ヲ記セル通牒ヲ露國政府ニ交付シ、同時ニ其公使館員ト共ニ出發スルノ意思ヲ宣明シタノデアアル。此通牒ハ、ウエストレーキ教授ガ開戦宣言ト同視スベキモノナルコトヲ認メタ所デアアル。今更ノ八日午前七時半過ノ通牒ハ、今後交渉ヲ繼續スルモ妥結ニ達スルヲ得スト認ムル旨ヲ記シタガ、獨立行動又ハ戰國的行動ヲ行フベキ旨ノ豫告ヲ具ヘタモノデナイカラ、開戦宣言トシテ認ムルコトニ付キ困難ヲ感ゼザルヲ得ナイ。

### 三

第二ノ問題ハ、假リニ上述ノ對米交渉ニ關スル覺書ガ開戦宣言ト同視シ得ルトセバ、之ヲ米國大使ニ交付シ、次デ英國大使ニ其始末ヲ通告セル午前五時半過、若クハ七時半過、又前述ノ覺書ガ開戦宣言ト同視シ得ストセバ、明白ナル戰爭狀態ノ通告文ヲ米、英、カナダ、澳洲ノ大公使ニ手交シタ同日午前十一時過ヨリモ、布陸方面又ハ馬來若クハ香港方面ノ敵對行為ノ實際ノ時間ノ上ニ於テ、早ク行ハレタルコトアリトセバ、所謂開戦ニ關スル海牙第三條約ノ違反ト爲サザルヲ得ザルヤ否ヤ

1811-4

問題デアル（以上再録）。

此ノ第二ノ問題ニ關シテ上述ノ海牙第三條約ノ違反ナシト説クコトニツキ、少クトモ左記ノ五點ノ考量スベキモノガアルト考ヘル。

(1) 開戦日ニ於ケル實際上ノ時間ノ前後ヲ考量セズシテ呼稱上ノ時間ノ前後ヲ考量スルコト

(2) 經濟的斷交及戦争開始ノ爲メノ軍備ニ依ルA、B、C、Dノ包圍ノ措置ノ全部又ハ一部ヲ以テ敵對行爲ト認メルコト

(3) 開戦ニ關スル海牙ノ第三條約ノ元來ノ目的ハ達成サレズシテ、條約其ノモノガ一種ノ *pretext* 又ハ *subterfuge*（虚勢又ハ虚影）タルニ過ギザルニ至ツタトシ又ハ條約ノ規定其ノモノガ現時ノ國際關係ニ於テ、國運ヲ賭スル戦争ニ關係シテ無理ニシテ偽善的ナル規定ニシテ眞ノ存立事由ヲ在セヌトスル等（卒直ニ言ヘバ）條約其モノニハズラツケルコト

(4) 自衛權 (*right of self-defence*) 又ハ自己保存權 (*right of self-preservation*) ノ活動スル場合ニ該當スルノ故ヲ以テ、海牙ノ第三條約ヲ無視シ得ベキヲ説クコト

#### 四

開戦ノ日ニ於ケル實際上ノ時間ノ前後ヲ考量セ



1811-5

スシテ呼稱上ノ時間ノ前後ヲ考量シ、海牙ノ第三  
 條約ノ違反ナキヲ説クヲ得ベキヤ否ヤノ(I)ノ問題  
 ニツキテ先ヅ研究セント欲スル。

茲ニ所謂呼稱上ノ時間ノ上ヨリ言ヘバ、時差ノ  
 關係ヨリシテ、實際ニ於テ同時ナルモ、土地ヲ異  
 ニスル爲メ時間ノ呼稱ヲ異ニシ、異ナル時トシテ  
 取扱ハレルノデアアル。例ヘバ東京ト布哇トノ時差  
 ガ五時間ニシテ、東京トシンガポールトノ時差ガ  
 二時間ト假定スルトキハ、呼稱上ノ時間トシテハ、  
 東京ノ午前三時ハ布哇ノ午前八時ニシテ、シンガ  
 ポールノ午前一時ナルベク、呼稱ノ上ニテハ異ナ  
 レル時デアアルガ、實際上ノ時ヨリスレバ、同時デ  
 アルト言ヘネバナラス。今假リニ東京ニ於テ開戦  
 ノ宣言ヲ午前八時ニ於テ行フトシ、而シテ呼稱上  
 ノ時間ヲ標準トシテ、布哇ニテモ、シンガポール  
 ニテモ、其各地ノ午前八時以後ニ於テハ敵對行爲  
 ヲ行フトコトニ依リ海牙第三條約ニ違反セザルヲ得  
 ルト主張セントスルトキハ、布哇ニ於テ開戦宣言  
 交付ノ實際ノ時ニ五時間先デテ敵對行爲ヲ行ヒ得  
 ベキモ、シンガポールニ於テハ二時間後レザルト  
 キハ敵對行爲ヲ行ヒ得ザルコトヲ認メルコト、ナ  
 ルノデアアル。假リニ敵對行爲ヲ開始スル地點ガ、  
 開戦宣言ヲ手交スル地テル東京ヨリ東ノ方向ニ經

1811-6

度百八十度ヲ距テルトセバ、時差ノ關係上、開戰  
宣言交付ノ實際ノ時間ヨリ約半日以前ニ敵對行爲  
ヲ行フモ、敵對行爲ノ豫告ヲ爲スヲ求メル條約ニ  
違反セヌコト、ナルノ奇現象ヲ見ルニ至ルベキデ  
アル。之ニ反シテ、西ノ方向ニ經度百八十度ヲ距  
テルトセバ、開戰宣言交付ノ實際ノ時間ヨリ約半  
日ヲ過ギザレバ、敵對行爲ヲ行ヒ得ザルコト、ナ  
ルベキデアアル。海牙ノ第三條約ノ趣旨トスル所ハ、  
豫告ナクシテ突然敵對行爲ノ行ハレルコトヲ防ガ  
ントスルニ在ルニ拘ハラズ、開戰ノ宣言ヲ交付ス  
ル東京ヨリ東ノ方向ノ地點ニ於テ敵對行爲ヲ開始  
スル場合ニハ、實際ノ時間ノ上ニ於テ開戰宣言交  
付ノ時ニ先ツコト或ハ略五時間、或ハ略半日ニシ  
テ敵對行爲ヲ行フモ條約ニ違反セスト爲スノ說ハ  
第三海牙條約ノ解釋尙トシテ有力ナルコトヲ得ナ  
イト考ヘラレル。而シテ開戰宣言交付ノ場所ヨリ  
西ノ方向ノ地點ニ於テ敵對行爲ヲ開始スル場合ニ  
ハ、上述ノ例ニ依レバ、實際ノ時間ノ上ヨリ、開  
戰ノ宣言交付後或ハ略二時間、或ハ略半日ヲ經過  
セザレバ敵對行爲ノ開始ヲ行ヒ得スト爲ス如キハ  
實際ニ於テ行ハレ難キ所デアルト考ヘラレル。此  
點ニ於テ、英國ハ其開戰宣言中ニ於テ、十二月七  
日ノ夕ニ、日本軍ガ馬來海岸ニ上陸ヲ企テ、シン



1811-7

ガボール及香港ヲ砲撃シタト主張スルコトニ注意  
スベキデアル。之ヲ要スルニ、開戦ノ日ニ於ケル  
實際上ノ時間ノ前後ヲ考量セズシテ、呼稱上ノ時  
間ノ前後ヲ考量スルコトニ依リ、海牙第三條約ノ  
違反ナキヲ辨解スルノ企圖ハ成功シ難キモノト認  
メザルヲ得ナイノデアル。

五

次ニ經濟的斷交及戦争開始ノ爲メノ軍備ニ依ル  
A、B、C、Dノ包圍ノ全部又ハ一部ヲ以テ敵對  
行爲ト認メルコトニ依リ、海牙第三條約ノ違反ナ  
シト説クヲ得ルヤ否ヤノ(2)ノ問題ヲ研究スベキデ  
アル。米國ヲ中心トシテA、B、C、D國ニ濠洲  
ヲ加ヘテ行ハレタ經濟的斷交及軍備ニ依ル日本包  
圍ノ措置ノ全部又ハ其一部ヲ以テ敵對行爲ト稱ス  
ルコトハ、其ノ日本ヲ敵視シテ行ヘル所ナルヲ以  
テ、稍漠然タル意義ニ於テ之ヲ敵對行爲ト稱スル  
コトヲ妨ゲナイノデアルガ、敵對行爲ノ語ハ種々  
ノ意義ニ用ヒラレ、單ニ海牙條約ノミヲ見ルモ、  
海牙ノ第三條約ニ所謂敵對行爲ハ、全然海牙ノ第  
五條約第十條ニ所謂敵對行爲ト同意義デハナイト  
ノ見解ガ存シ得ル。後ノ場合ニハ國際法上ノ戦争  
狀態ニ於ケル戦争行爲又ハ慣習國際法上戦争狀態  
ヲ惹起スト認ムベキ兵力的加害行爲ヲ指スト解シ

得ルノデアアルガ前ノ場合ニハ之ヨリ稍良義ニ用ヒ  
 ラレ、國際法上ノ戰爭狀態ノ有無ヲ問ハズ又ハ戰  
 爭狀態ガ加害手段其モノニ依リ惹起サル、ヤ否ヤ  
 ヲ問ハズシテ一切ノ兵力的害敵手段ヲ包括スル意  
 義ニ用ヒラレタモノト解シ得ルノデアアル。更ニ適  
 用廣キ觀念トシテ飛漠然タルモ敵意ヲ以テ加害ヲ  
 行フノ行爲タルノ故ヲ以テ、經濟的絶交又ハ國際  
 紛爭時件ヲ存スル大規模ノ軍備ヲ増シテ敵對行爲  
 ト稱シ得ヌノデハナイ。然レドモ最後ノ意義ニ於  
 テハ敵對行爲ハ之ヲ海牙第三條約ニ所謂敵對行爲  
 ト同意義ノモノトシテ認メ難イノデアアル。假リニ  
 同意義ト爲ストキハ、同條約ノ規定ニ依リ、其ノ  
 行ハル、ニ先テテ開戦ノ宣言又ハ條件付開戦宣言  
 ヲ含ム最後通牒ノ形式ヲ以テスル豫告ヲ行ハザレ  
 バ第三條約ノ違反トナルベキデアアルガ、是ノ如キ  
 解釋ハ實際之ヲ執ルコト困難デアアル。如何ナル程  
 度ノ經濟的措置又ハ如何ナル程度ノ軍備ガ開戦ノ  
 宣言又ハ條件付開戦宣言ヲ含ム最後通牒ノ形式ヲ  
 具ヘタ豫告ヲ爲サストキハ之ヲ行フコトガ出來ヌ  
 コト、ナルヤヲ認定スルコトガ實際上全然不可能  
 デアルカラデアアル。故ニ經濟的絶交及軍備ヲ以テ  
 海牙第三條約ニ所謂敵對行爲ト解シ、A、B、C、  
 D側ガ開戦ノ宣言又ハ條件付開戦宣言ヲ含ム最後



1811-9

通牒ノ形式ヲ以テスル豫告ナクシテ之ヲ行ツタコ  
トラ以テ已ニ海牙第三條約ノ違反ヲ組成スルモノ  
トシ、從テ我國ガ是ノ如キ所謂敵對行爲ノ開始ガ  
已ニ敵ニ依リ行ハレタル後ニ於テ之ニ應ジテ兵力  
的敵對行爲ヲ行ツタノハ、條約違反デナイト論ス  
ル如キコトハ困難デアルト言ヘネベナラス。

# 六

上掲ノ第二問題中ノ(3)ノ點ハ、卒直ニ言ヘバ開  
戦ニ關スル海牙ノ第三條約ニケテヲ附ケルコトニ  
關係スルノデアルガ、此點ニツキ(イ)及(ロ)ニ分テテ  
述ベント欲スル。

(イ) 開戦ニ關スル海牙ノ第三條約ハ、開戦宣言又  
ハ條件付開戦宣言ヲ含ム最後ノ通牒ノ形式ヲ以  
テスル豫告ナクシテ敵對行爲ヲ行ヒ得ザルコト  
ヲ定メタガ、是レ對手國ガ突然意外的ナル加害  
行爲ヲ受ケルコトヲ妨ゲントスルコトヲ主タル  
目的トシテ定メラレタ所デアルガ、條約中ニ於  
テ、豫告ト最初ニ行ハルル敵對行爲トノ間ニ經  
過スベキ時間ニツキ何等ノ規定ヲモ定メルコト  
ヲ得ナカツタ。又對手國ノ機關ニ開戦宣言ヲ呈  
示スベキ場所若クハ機關ノ何タルヤニ關シテモ  
明白ナル規定ヲ立テナカツタ爲メ、對手國ノ政  
府ガ敵對行爲開始前ニ之ヲ知ルヲ得ルト否トラ

問ハズシテ、自國ニ壓制スル對手國ノ外交使節ニ呈示スルコトヲ以テ足ルトスルノ見解ヲモ生ジ得ルニ至ルノデアル。是ノ如クナルヲ以テ海牙第三條約ノ元來ノ主タル目的トスル所ノ對手國ガ突然意外ナル加害行爲ヲ受クルコトヲ妨ゲントスルノ目的ハ達セラレザルニ終リ、自國首都ニ壓制スル對手國外交使節ニ開戦宣言ヲ交付シタ後僅ニ數十分ヲ経テ、巨タレル土地ニ於テ敵對行爲ヲ開始スルモ條約違反ニ非ズトノ見解ヲ主張スルノ餘地アルニ至ツタ。既ニ是ノ如クナル以上ハ海牙第三條約ハ一種ノ直勢 (Direct) ニ過ギズ、虚影 (Schein) ニ過ギズシテ、國遑ヲ睹スル戦争ノ開始ニ際シ是ノ如キ兒戯ニ類スル條約ヲ尊重スルノ必要ナキニ至ツタト稱スルコトモ、或ハ尤モラシク圖カレル點ガアルノデハナイカト考ヘラレル。

(ロ) 國遑ヲ睹スル戦争ニ際シ、最初ノ敵對行爲ガ屢々戦争上ニ於テ重大ナル效果ヲ生ズルコトアルモノデアルノニ、對手國ニ警告ヲ爲シ、對手國ノ抵抗及反撃ノ準備ヲ爲スノ餘裕ヲ與ヘザレバ、之ヲ行ヒ得ヌト爲スノ海牙第三條約ノ元來ノ趣意ガ現實國際關係ノ上ヨリシテ無理ナルモノ、ドンキホーテ的ノモノデアツテ、少シク語



勢ヲ強メテ言ヘバ、海牙ノ第三條約ハ、現實ノ  
 國際關係ニ於テハ元來眞ノ存立學由 (raison d'être)  
 ヲ有シ得ザル無理ナル (raisonnable) 偽善的條  
 約デアルトイヒ得ベク、突然ノ敵對行爲ヲ行フ  
 コトハ形式上條約ニ反スルニ相違ナキモ、彼是  
 共ニ軍備ヲ行ヒ、開戦ノ機ノ迫レル際、機先ヲ  
 制シテ敵對行爲ニ出ヅルコトハ、現實ノ國際關  
 係ノ實際ニ立脚スル條理ノ上ヨリ深ク尤ムルニ  
 足ラスト説クコトモ、尤モラシク聞カレル點ガ  
 アルノデハナイカト考ヘラレル。然レドモ是等  
 ノ海牙第三條約ニケチヲ附ケル言説ニハ、重大  
 ナル缺點ガ存スルコトヲ看過シ得ナイ。  
 (イ)ノ點ヨリ言ヘバ、形式上條約ニ違反スルコト  
 ナキモ、條約ノ目的トスル所ガ行ハレザル場合  
 ヲ生ズルコトガ有リ得ベキモノトスルモ、是ガ  
 爲メニ條約ヲ無視シテ形式上ニ於テモ條約ニ違  
 反シテ差支ナイトスルノ齟齬ヲ生ズル筈ハナイ  
 ノデアル。苟モ海牙ノ第三條約ガ條約トシテ存  
 スル以上ハ、對手國政府ニ直接ニ開戦宣言ヲ交  
 付シ、又ハ對手國政府ニ之ヲ傳達シ得ベキ對手  
 國機關 (例ヘバ外交使節) ニ開戦宣言ヲ交付シ  
 テ、對手國政府ガ之ヲ知り得タル後ハ、其ノ上  
 ニ時ノ餘裕ヲ與ヘズシテ敵對行爲ヲ行フコトヲ

1811-12-

條約上禁ぜられザルモ、實際ノ時ニ於テ敵對行爲ノ方ガ前ニ行ヘルル爲メ對手國政府ガ之ヲ知ルヲ得ザル前ニ敵對行爲ガ行ハレルコト、ナルノハ、何所ニ敵對行爲ガ行ハレルモ條約違反トナルト主張サレテモ之ヲ誤認トシテ説クコトガ困難ト思ヘレル。

(ロ)ノ點ニ關シテ言ヘバ、海牙ノ第三條約ガ現實ノ國際關係ニ相應セザル無理ナル偽善的ナル條約ナリトスルモ、條約トシテ存スル以上ハ、之ニ順適セザルコトハ、現實國際法ノ上ヨリ見レバ、條約違反ノ結果ヲ生ゼザルヲ得ナイ。

是ノ如ク(イ)及(ロ)ハ、單獨ニ之ヲ説クトスルモ、到底第三條約ノ規定ヲ無視シテ敵對行爲ヲ開始スルコトヲ國際法上正當化スルノ力ナキモ、此種ノ理由ニ依リ海牙ノ第三條約ニケチヲ附クルコトハ、之ヲ(4)ノ點ニ關スル後述ノ議論ニ從タルモノトシテ唱ヘルトキハ、若干ノ感覺上ノ效果ヲ收ムルコトガ有リ得ルト思ヘレル。特ニ(ロ)ニ至ツテハ後述ノ如ク自己保存權及自衛權ノ故ヲ以テ海牙第三條約ヲ無視シ得ルコトヲ主張スル場合ニ於テ、有力ナル補助的理由ヲ供給スルモノト思ヘレル。

# 七

上述スル所ニ依リ、今回ノ事件ニ關シテ、他ノ



種々ノ點ノ考量（<sup>上六條</sup>至六條）ヲ存スルモ、未ダ海牙  
第三條約ノ違反ナキコトヲ明示スルニ足ラスト考  
ヘラルルヲ以テ、最後ニ自衛權及自己保存權ノ採  
用ニ關シテ研究セント欲スル。

自己保全權（right of self-preservation, droit  
de conservation de soi-même, Selbsterhaltungsrecht）

ノ國家ノ基本的權利ノ一トシテ存ズルコトハ往時  
ノ國際法學者ノ殆ンド一般的ニ認メタ所デアルガ、  
近時ニ至リ自己保全權ヲ認メズシテ單ニ自衛權ノ  
ミヲ認メル學說ガ有力トナツタ傾向ヲ見ルノデア  
ル。或學者ハ自己保存權ノ名稱ヲ用フルノデア  
ルガ、自衛ニ關スル範圍内ニ於テ存シ得ルヲ認メ（  
例ヘバオツベンハイム）又自己保存權ヲ認ムルモ、  
其内容トシテ認ムル所ハ自衛權ニ外ナラザルコト  
ガアル（例ヘバホール）然レドモ近時ノ學者中ニ  
モリウイエ（Rivier）ヲ初トシテ、米國ニ於テモ  
ジョージ。グラフトン。ウイルソン、ヘーシー、  
ガーナーノ如キ學者ハ自己保存權ノ存在ヲ認メテ  
居ルノデアル。或ハ國際法ノ範圍内ニ於テ、獨逸  
刑法ノ觀念ニ基キ自衛權ニ對スル緊急防衛（Notwehr）  
ノ外ニ自己保全權ニ近似スル緊急狀態行爲（Notst-  
andhandlung）ヲ認メルモノガアル（例ヘバコ  
ーラー）。思フニ現時ノ國際關係ニ於テ自己保全

1811-13

權ヲ自衛權ノ外ニ之ニ併立スルモノトシテ認ムル  
ノ理論上ノ根據ヲ認メ得ベキモノト考フルモ、國  
際慣例上ニ於テ二者ガ明白ニ區別シテ考ヘラレザ  
ルヲ以テ、此點ノ議論ハ之ヲ他日ニ譲ルコトトシ、  
茲ニハ自己保全權ト自衛權トヲ區別シテ考フル場  
合ニ於ケル單純ナル理論上ノ異同ニ關シテ一言ス  
ベキデアル。

但シ實際ノ國際慣例上二者ガ明白ニ區別シテ考  
ヘラルルコト殆ト無キノミナラス、近時ニ於テ自  
己保全權ヲ全然否認スルノ見念ガ有力ナルコトハ、  
前述ノ如クデアルコトニ注意スベキデアル。

二者ヲ併立セシメテ之ヲ區別セントスル單純ナ  
ル理論ヨリ言ヘバ他國ノ普通ノ權利ニ勝ツトシテ  
認メラルル狹義ノ自己保存權ハ、自衛權ト同様ニ、  
國家ノ緊急權 (*droit de nécessité*) ニ屬シ、之ニ依  
リ擁護サル、權利又ハ其他ノ法益ニ對スル切迫セ  
ル危險ヲ存スル場合ニ於テ、之ガ擁護ニ必要ナル  
範圍内ニ於テノミ活動スルコトヲ認メラルベキモ  
ノナルモ、自衛權ニ至リテハ他ヨリ攻撃ヲ受クル  
場合ニ於テ、自ラ權利又ハ法益ヲ衛ル爲メニ活動  
スルモノニシテ、攻撃ガ現ニ行ハレル場合又ハ攻  
撃ノ行ハルベキ形勢ノ切迫セル場合ニ於テ始メテ  
攻撃者ニ對シテ活動スルモノデアルガ、自己保存



權ニツキテ言ヘバ、必ズシモ他ノ攻撃ヲ存スルヲ待タズシテ、生存ヘ又ハ之ニ略准ズル程度ノ重大利益ノ切迫セル危険ヲ存スル場合ニハ、欲義ノ自己保全權ガ活動スベク、時ニ第三國ニ對シテモ行ハルルコトガ認メラレ得ベキデアル。自衛權ノ場合ニ於テハ、之ヲ國內法上ノ正當防衛權ト類似スル觀念トシテ解セントスル傾向ヨリ言ヘバ、必ズシモ生存ヘ又ハ之ニ略准ズル程度ノ重大利益ノ切迫セル危険ヲ存スル場合ニ限ラズシテ、甚シク些少ナラザル權利又ハ利益ニ關スル切迫セル危険ヲ存スルトキハ活動シ得ルト認ムベキモノノ如クデアル。

今回ノ開戦ノ際ニ於ケルヘ次ニハニ於テ述ブベキ一事態ヲ考ヘルニ、國家生存ノ重大利害ノ懸ル所ノ切迫セル危険ヲ有スルコト明白ナルヲ以テ欲義ノ自己保存權ノ國際關係ニ於ケル存在ヲ認メルトキハ、自己保存權ノ上ヨリ、必要ノ範圍内ニ於テ海牙ノ第三條約ノ規定ヲ無視スルコトヲ得ルコトヲ明言シ得ルト思ハレル。而シテ自衛權ノ上ヨリ見ルトキニ於テ、今回ノ開戦ノ際ニ於ケルヘ次ニハニ於テ述ブベキ一事態ハ我國ニ對スル攻撃ヲ含蓄スルト稱スルノ根據ヲ求メ得ベキニアラザルヤノ疑ヲ存スルノデアル。假リニ海牙第三條約ノ

1811-16

無視ノ事實ガアリタルト假定スルモ、自衛權ハ一  
切ノ條約ノ規定ニ勝ツベキモノナルヲ以テ、條約  
違反ノ責任ヲ存ゼザルモノト論ズルノ餘地アルガ  
如ク考ヘラレル。此點ニ關シテ注意スベキハ、第  
一次世界大戦ノ際ノ白耳義侵入ノ際ノ獨逸側ノ議  
論ニ於テ自衛權名義ヲ以テ侵入ノ措置ヲ辯護シ、  
攻撃ガ白耳義側（コーラー）又ハ佛國側（シェー  
ンボルン）ヨリ獨逸ニ對シテ行ハレタルノ故ヲ以  
テ、侵入ハ正當化サレタルモノト爲シタコトデア  
ル。ハニ於テ述ブベキ今同ノ開戦前ノ事態ハ白耳  
義侵入前ノ事態ニ比シテ攻撃ノ存在ヲ認ムルニ一  
層恰當ナルコトハ言ヲ待タナイノデアル。

#### 八

米國ノ當局者ハ、我國トノ交渉ノ繼續中ナルニ  
拘ハラズ、嘗ニ我國ニ對スル經濟的絶交ヲ計畫ス  
ルニ止マラズシテ、米國及其他ノ隨從者ト共ニ鋭  
意對日壓迫策ヲ廻ラシ所謂 A、B、C、D 計畫ヲ  
進メ、米國海軍ノ龐大ナル建艦計畫ガ益進捗スル  
ト同時ニ太平洋方面ノ海空軍ノ基地強化ガ着々進  
行シ、フィリッピンニ於テ本年八月以降戦争開始  
ノ目的ヲ以テ多クノ準備行爲ヲ行ヒ、飛行場ノ建  
設、陸兵ノ増派、潜水艦ノ急派、多量ノ航空機、  
兵器彈藥及軍用器材ノ輸入、海岸一帯ノ高射砲ノ



1811-17

据付、マニラ灣ニ於ケル機雷ノ敷設等が行ヘレ、  
又東亞ニ向フ太平洋航路ノ米國船ノ武装が行ヘレ  
タル如ク、米國ハシンガポール港ノ共同使用ヲ英  
國ニ提議セントシ、蘭印及澳洲ニ關シテモ軍事基  
地ニ對スル使用承認ノ要求ヲ爲サントシ、支那ニ  
關シテ唯一ノ援蔭艦送輸タルビルマ路ノ崩壞ヲ妨  
ガントシ、陸上輸送ノ確保ヲ期シテ航空機隊ヲ派  
遣シ哨戒ヲ行ハシメントスル旨ガ言明サレタトイ  
フコトデアル。

英國ニ於テマレーノ英國總督ハ、非常事態ノ宜  
言ヲ發シ、突如トシテ東亞艦隊ヲ編成シ、トマス・  
アイリツプス提督ヲ司令長官ニ任命シ、英國本國  
ヨリ砲兵、工兵ノ増派ヲ受ケ又印度洋及南阿方面  
ヨリ艦船ノ増派ヲ受ケ、馬來ノ防備ヲ名トシテ泰、  
馬來ノ國境ニ數萬ノ大軍ヲ集結シテ、泰侵略ノ切  
迫セル状態ヲ示シタ。英國ノ空軍モ米國ノ援助ニ  
依リ増強サレタ。

英國ト重慶政府トノ間ニビルマ方面ニ於テ軍事  
關係上ノ若干ノ交渉ガ在シ、英、米及重慶ノ對日  
軍備ハ日ヲ追フテ益進捗スルノ現状ニアツタ。A、  
B、C、Dノ聯合ハ已ニ澳洲ヲ加ヘ、又何時薩摩  
ヲ加ヘルコトトナルヤモ測ラレスシテ、政治的軍  
事的及經濟的ニ緊密ナル聯繫ヲ保テ、日本ノ南方

1811-18

發展ヲ抑ヘントシ、開戦ノ覺悟ヲ以テ日一日ニ包  
圍障ヲ強化セントスルモノト認メラレルノデアアル。

是ノ如キ事態ハ日本壓迫ノ切迫セル形勢ヲ示ス  
モノデアツテ、我國ヨリ見ルトキハ國家生存ノ重  
大利害ノ懸ル所ノ切迫セル危險ヲ存スルコト明白  
ナルヲ以テ、(自己保存權ガ現時ノ國際關係ニ於  
テ存スルコトラ認メタルトキハ)、他國ノ權利ニ  
勝ツベキ欲義ノ自己保存權ノ活動スル場合ト認メ  
テ海牙第三條約ノ規定ヲ無視スルヲ得ベキモノト  
論ジ得ベキモノト考ヘラレル。而シテ又我國ニ對  
スル敵意ヲ包藏シテ、開戦ノ覺悟ヲ以テ行ヘル包  
圍障ハ、經濟及軍事ニ關係シ我國ノ死命ヲ創セン  
トスルモノニシテ、一顧ノ攻堅又ハ攻撃ノ切迫セ  
ル脅威トシテ認ムルヲ得ベク、自衛權ノ活動シ得  
ル場合トシテ論ズルノ餘地アルモノト考ヘラレル。

# 九

結論トシテハ、開戦ニ關スル海牙第三條約ノ違  
反ノ有無ノ問題ニ關シテ種々ノ考量カ行ヘレ得ベ  
キモ <sup>上文</sup>至六參照、結局ニ於テ自衛權又ハ自己保全權  
ヲ援用シ、且ツ海牙第三條約ノ元來無理ナル條約  
(*impossible treaties*) ナルヲ説クコト (<sup>上文</sup>參照六)  
ニ依リテノミ違反ノ責任無キヲ説キ得ルモノト思  
ヘレル。而シテハニ過バタ事態ハ自己保全權ハ之



1811-19

ヲ認ムルトセバ)ノ活動ノ場合ト稱スルヲ得ベク、  
又自衛權ノ活動ノ場合ト主張スルノ餘地アルモノ  
ト信ズル。今同漢發サレタ詔書ヲ讀ミスルニ、一  
帝國ハ今ヤ自存自衛ノ爲駭然起ツテ一切ノ障礙ヲ  
破碎スルノ外ナキ旨ヲ宣サレタルハ、自己保存  
權及自衛權 ( rights of self-preservation and  
self-defence ) ノ併立ヲ認メ、其ノ發動ノ故  
ヲ以テ海牙第三條約ノ無視ヲ説明スルコトガ、恰  
當ナルヲ自ラ示サルル如クニ思ハラルルノデアル。

Doc 1811 (art)

證 明 書

「ワシントン」文書局 第 號  
國 際 検 察 部 第 八 號

典 據 及 ビ 公 正 ニ 關 ス ル 證 明

余、林縣ハ余ガ下記ノ資格ニ於テ、即チ外務省文書課長トシテ、日本政府ト公的關係ニ在ルモノナルコト、竝ニ該官吏トシテ余ガ茲ニ添附セラレタル、二百二十六頁ヨリ成ル、千九百四十二年ノ昭和十七年ノ六月十九日附、下記題名、即チ大東亞戰爭關係國際法諸問題論文集(是等ノ論文ハ昭和十六年十二月八日直后外務省協力ノ下著名ナル日本ノ國際法學者委員會ニ依リ作成セラル)ノ文書ノ保管ニ任ジ居ルコトヲ茲ニ證明ス。

余ハ更ニ添附ノ記録及ビ文書ガ日本政府ノ公文書ナルコト、竝ニ右ガ下記名稱ノ省又ハ部局ノ公式書類及ビ綴ノ一部ナルコトヲ證明ス。(若シアラバ綴番號又ハ引用、其ノ他公式書類又ハ綴ニ於ケル該文書ノ成規所在ノ公式名稱ヲモ特記スベシ)

外 務 省



Doc 1811 (cont)

千九百四十六年 / 昭和二十一年十月二十二日

東京ニ於テ署名 林 稔 (印)  
営該官吏署名欄 文 書 課 長  
證 人 尾 戸 長 春

余、*John A. Curtis* 公式入手ニ關スル證明  
ジョン・エー・カーチスハ、余ガ聯合國最高指揮  
官總司令部ニ關係アルモノナルコト、竝ニ上記題  
名ノ文書ハ余ガ公務上、日本政府ノ上記署名官吏ヨ  
リ入手シタルモノナルコトヲ茲ニ證明ス。

千九百四十六年 / 昭和二十一年 / 十月二十二日

東京ニ於テ署名

氏 名 欄 *John A. Curtis*  
ジョン・エー・カーチス

右ノ者ノ公的資格 國際檢察部門 査官

證 人 *Richard E. Harsh*  
リチャード・エツチ・ラッシュ

★  
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